



**IN THE CIRCUIT COURT FOR THE TWENTY-EIGHT JUDICIAL CIRCUIT,  
BALDWIN COUNTY, ALABAMA**

SOMETHING EXTRA PUBLISHING, INC.	)	
d/b/a LAGNIAPPE WEEKLY	)	
	)	
Plaintiff,	)	
	)	Civil Action No.: CV-19-_____
v.	)	
	)	
BALDWIN COUNTY SHERIFF'S OFFICE,	)	
ANTHONY LOWERY,	)	
MICHAEL GAULL,	)	
	)	
Defendants.	)	

**COMPLAINT**

NOW COMES Plaintiff, SOMETHING EXTRA PUBLISHING, INC., d/b/a LAGNIAPPE WEEKLY, by its undersigned attorneys, LOEVY & LOEVY and DAVID A. MCDONALD, and brings this suit to overturn Defendant BALDWIN COUNTY SHERIFF'S OFFICE, ANTHONY LOWERY, and MICHAEL GAULL's failure, in violation of the Alabama Open Records Act ("ORA"), to comply with Something Extra Publishing, Inc.'s Open Records Act request for records relating to BALDWIN COUNTY SHERIFF'S OFFICE Corporal Matt Hunady's fatal shooting of Jonathan Victor. In support of its Complaint, SOMETHING EXTRA PUBLISHING, INC., d/b/a LAGNIAPPE WEEKLY states as follows:

**INTRODUCTION**

1. "Every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute." Ala. Code § 36-12-40.

2. "Every public officer having the custody of a public writing which a citizen has a right to inspect is bound to give him, on demand, a certified copy of it." Ala. Code § 36-12-41.

3. “It is clear from the wording of the Open Records Act that the legislature intended that the statute be liberally construed. In addition, we note, statutes intended for the public benefit are to be construed in favor of the public.” *Water Works & Sewer Bd. of City of Talladega v. Consol. Pub., Inc.*, 892 So. 2d 859, 862 (Ala. 2004).

4. The Alabama Supreme Court has defined a “public writing” as “a record as is *reasonably necessary* to record the business and activities required to be done or carried on by a public officer so that the status and condition of such business and activities can be known by our citizens.” *State v. Isbell*, 985 So. 2d 446, 451 (Ala. 2007).

5. The Alabama Supreme Court held that the scope of Ala. Code § 12-21-3.1(b) as an exception to ORA is “for records that are part of a pending criminal investigation.” *Water Works & Sewer Bd. of City of Talladega v. Consol. Pub., Inc.*, 892 So. 2d 859, 866 (Ala. 2004).

6. The Alabama Supreme Court held that Ala. Code § 12-21-3.1(b) does not except incident reports from being produced through ORA and distinguished incident reports from investigative reports by defining “incident reports” as a report that “documents any incident—from the mundane to the serious....” *Allen v. Barksdale*, 32 So. 3d 1264, 1271 (Ala. 2009).

7. “The party refusing disclosure shall have the burden of proving that the writings or records sought are within an exception and warrant nondisclosure of them.” *Tennessee Valley Printing Co. v. Health Care Auth. of Lauderdale Cty.*, 61 So. 3d 1027, 1030 (Ala. 2010).

### **JURISDICTION AND VENUE**

8. This action arises under the authority vested in this Court by virtue of Ala. Code §§ 12-11-31(1) and 12-11-33(1).

9. Venue is proper in this Court pursuant to Ala. Code § 6-3-2(b)(3).

## **PARTIES**

10. Plaintiff SOMETHING EXTRA PUBLISHING, INC., d/b/a LAGNIAPPE WEEKLY (“LAGNIAPPE”) is the ORA requester in this case. LAGNIAPPE is Mobile, Alabama’s independent weekly newspaper, providing highly localized content for the citizens of Mobile and Baldwin County. LAGNIAPPE is the largest locally owned publication in the Mobile area and has published continually since July 24, 2002.

11. Defendant BALDWIN COUNTY SHERIFF’S OFFICE (“BCSO”) possesses and controls public writings of this state, employs public officers to maintain those public writings, and is located in Baldwin County, Alabama.

12. Defendant ANTHONY LOWERY is the Chief Deputy Colonel and public officer for BCSO, and in such capacity has the possession of and control over the records that Plaintiff seeks. Defendant LOWERY resides in his official capacity in Baldwin County, Alabama. The action this lawsuit seeks to compel will take place in Baldwin County.

13. Defendant MICHAEL GAULL is the Lieutenant and public officer for BCSO’s Special Investigations Unit & Administrative Support, and in such capacity has the possession of and control over the records that Plaintiff seeks. Defendant LOWERY resides in his official capacity in Baldwin County, Alabama. The action this lawsuit seeks to compel will take place in Baldwin County.

## **BACKGROUND INFORMATION**

14. On May 12, 2017, emergency response units responded to a single vehicle crash on Interstate 10 in Baldwin County and found Jonathan Victor injured in the vehicle.

15. After Mr. Victor exited the vehicle, BCSO Cpl. Matt Hunady shot and killed Mr. Victor. BCSO later described Mr. Victor as being “combative.”

16. On October 13, 2017, a grand jury declined to indict Cpl. Hunady on any criminal charges. Upon information and belief, there is no pending investigation into the Victor matter.

17. On October 16, 2017, BCSO and other law enforcement officials held a press conference, where BCSO released a video recorded in a car by one of the many bystander witnesses and the edited footage from Cpl. Hunady's body camera that it recorded following the shooting.

18. The witness bystander filmed that video from inside a vehicle, and other roadside vehicles obstruct the actual shooting from the camera's view.

19. During the press conference, Baldwin County Sheriff Huey Hoss Mack stated "in fact there were actually several videos that were shot of this incident by bystanders. What you've seen is the best. They were the people that were the closest." Baldwin County District Attorney corroborated Sheriff's Mack statement when asked about obtaining the witnesses' videos by stating "eventually everyone cooperated with us, and we got all of the known videos from that night."

#### **JANUARY 31, 2019 ORA REQUEST**

20. LOWERY is the Chief Deputy Corporal at BCSO. In that capacity, he is vested with authority to receive and respond on behalf of BCSO to requests for public records made pursuant to the Alabama Public Records Act, Ala. Code § 36-12-40.

21. GAULL is the Lieutenant at BCSO's Special Investigations Unit & Administrative Support. In that capacity, he is vested with authority to receive and respond on behalf of BCSO to requests for public records made pursuant to the Alabama Public Records Act, Ala. Code § 36-12-40.

22. On January 31, 2019, LAGNIAPPE sent an email to LOWERY seeking to file a

proper ORA request with BCSO. A true and correct copy of the email is attached as Exhibit A.

23. On January 31, 2019, LOWERY replied to LAGNIAPPE's email and asked for more information about the request. A true and correct copy of the email is attached as Exhibit B.

24. On January 31, 2019, LAGNIAPPE requested "All of the records related to the shooting of Jonathan Victor on May 12, 2017, including but not limited to dash cam, body cam, and third-party video; the audio from any 911 calls or radio communications; photographs from the scene; autopsy records; and communications such as emails, text messages, and other forms of messaging." A true and correct copy of the request is attached as Exhibit C.

25. On January 31, 2019, LOWERY acknowledged the ORA request noting that it is "one we continually keep getting asked for", stated that BCSO was working with its attorney to comply with ORA, and stated that GAULL will have more information. A true and correct copy of the response is attached as Exhibit D.

26. On February 5, 2019, LAGNIAPPE followed up with GAULL as to how to proceed with getting the responsive requested records. A true and correct copy of the email is attached as Exhibit E.

27. On February 5, 2019, GAULL and BCSO denied the request in its entirety citing Ala. Code § 12-21-3.1(b). A true and correct copy of the denial is attached as Exhibit F.

#### **COUNT I – JANUARY 31, 2019 FAILURE TO PRODUCE RECORDS**

28. The above paragraphs are incorporated by reference.

29. BCSO, which is located in Baldwin County, has possession and control over the requested records.

30. LOWERY, in his official capacity for BCSO, resides in Baldwin County and has possession of and control over the requested records.

31. GAULL, in his official capacity for BCSO, resides in Baldwin County and has possession of and control over the requested records.

32. The records sought in LAGNIAPPE's ORA request are non-exempt public writings of BCSO.

33. LAGNIAPPE properly followed all procedural requirements imposed by BCSO.

34. BCSO, LOWERY, and GAULL violated ORA by failing to produce all of the responsive records to LAGNIAPPE's ORA request.

### **PRAYER FOR RELIEF**

**WHEREFORE**, LAGNIAPPE asks that the Court:

- i. assume jurisdiction over this action;
- ii. enter declaratory judgment that Defendants have violated ORA;
- iii. enter an injunction against Defendants to comply fully with the ORA and to furnish Plaintiff all public records meeting the description in its records request;
- iv. award Plaintiff reasonable attorneys' fees and costs;
- v. award such other relief the Court considers appropriate.

RESPECTFULLY SUBMITTED,

/s/ **David A. McDonald**

DAVID A. MCDONALD (MCD042)

P. O. Box 832

Mobile, Alabama 36601

Telephone: (251) 434-0045

Facsimile: (251) 434-0047

**Attorney for Plaintiff**

**OF COUNSEL:**

Matthew Topic  
Joshua Burday  
Merrick Wayne  
LOEVY & LOEVY  
311 North Aberdeen, 3rd Floor  
Chicago, IL 60607  
312-243-5900  
foia@loevy.com  
(*Pro Hac Vice* Forthcoming)

**DEFENDANTS TO BE SERVED AS FOLLOWS:**

BALDWIN COUNTY SHERIFF'S OFFICE (via certified mail)

Baldwin County Sheriff's Department  
ATTN: Sheriff Huey Hoss Mack  
310 Hand Avenue  
Bay Minette, AL 36507

ANTHONY LOWERY (via certified mail)

Baldwin County Sheriff's Department  
ATTN: Anthony Lowery  
310 Hand Avenue  
Bay Minette, AL 36507

MICHAEL GAULL (via certified mail)

Baldwin County Sheriff's Department  
ATTN: Michael Gaull  
310 Hand Avenue  
Bay Minette, AL 36507



ELECTRONICALLY FILED  
2/26/2019 11:28 AM  
05-CV-2019-900262.00  
CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
JODY L. WISE, CLERK

From: Jason Johnson [mailto:[jason@lagniappemobile.com](mailto:jason@lagniappemobile.com)<mailto:[jason@lagniappemobile.com](mailto:jason@lagniappemobile.com)>]  
Sent: Thursday, January 31, 2019 9:07 AM  
To: Anthony Lowery <[ALOWERY@baldwincountyal.gov](mailto:ALOWERY@baldwincountyal.gov)<mailto:[ALOWERY@baldwincountyal.gov](mailto:ALOWERY@baldwincountyal.gov)>>  
Subject: <EXTERNAL> Records Request

Chief Lowery,

This is Jason Johnson with Lagniappe in Mobile. I was hoping to make a records request to the department.

In the past I've just emailed you and asked for comments or to come review records, but if I was going to file a formal records request under the Alabama Open Records Act, how would I go about that?

Is there a standard form of some type or should I just send a written letter outlining the nature of the request?

Thank you,  
Jason Johnson  
Lagniappe  
(251) 445-8336





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2/26/2019 11:28 AM  
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On Thu, Jan 31, 2019 at 9:33 AM Anthony Lowery <[ALOWERY@baldwincountyal.gov](mailto:ALOWERY@baldwincountyal.gov)<mailto:[ALOWERY@baldwincountyal.gov](mailto:ALOWERY@baldwincountyal.gov)>> wrote:

Good morning. There is a form to request open records. I need to figure out where to point you. What is the request related to?

Anthony

Col. Anthony Lowery  
Chief Deputy  
Baldwin County Sheriff's Office  
FBI NA 252  
310 Hand Avenue  
Bay Minette, AL 36507  
251.937.0210  
[alowery@baldwincountyal.gov](mailto:alowery@baldwincountyal.gov)<mailto:[alowery@baldwincountyal.gov](mailto:alowery@baldwincountyal.gov)>  
Content of this email may be law enforcement sensitive and restricted from dissemination.



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Sent: Thursday, January 31, 2019 9:46 AM  
To: Anthony Lowery <[ALOWERY@baldwincountyal.gov](mailto:ALOWERY@baldwincountyal.gov)<mailto:[ALOWERY@baldwincountyal.gov](mailto:ALOWERY@baldwincountyal.gov)>>  
Subject: Re: <EXTERNAL> Records Request

I'm trying to request the following under the Alabama Open Records Act: "All of the records related to the shooting of Jonathan Victor on May 12, 2017, including but not limited to dash cam, body cam, and third party video; the audio from any 911 calls or radio communications; photographs from the scene; autopsy records; and communications such as emails, text messages, and other forms of messaging."

Thank you,  
Jason Johnson  
Lagniappe  
(251) 445-8336



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On Thu, Jan 31, 2019 at 10:32 AM Anthony Lowery <[ALOWERY@baldwincountyal.gov](mailto:ALOWERY@baldwincountyal.gov)<mailto:[ALOWERY@baldwincountyal.gov](mailto:ALOWERY@baldwincountyal.gov)>> wrote:

This is one we continually keep getting asked for. I have included Lt. Michael Gaull in this email. We are getting assistance from our attorney on this making sure we comply with open records. Lt. Gaull should have more. Keep in mind this is a BCMCU investigation, not ours.

Thanks.

Col. Anthony Lowery

Chief Deputy

Baldwin County Sheriff's Office

FBI NA 252

310 Hand Avenue

Bay Minette, AL 36507

251.937.0210

[alowery@baldwincountyal.gov](mailto:alowery@baldwincountyal.gov)<mailto:[alowery@baldwincountyal.gov](mailto:alowery@baldwincountyal.gov)>

Content of this email may be law enforcement sensitive and restricted from dissemination.



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2/26/2019 11:28 AM  
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BALDWIN COUNTY, ALABAMA  
JODY L. WISE, CLERK

On Feb 5, 2019, at 9:09 AM, Jason Johnson <[jason@lagniappemobile.com](mailto:jason@lagniappemobile.com)<mailto:[jason@lagniappemobile.com](mailto:jason@lagniappemobile.com)>>  
wrote:

Chief Lowery, Lt. Gaull

I just wanted to check back in on how I might need to proceed with this records request. I do appreciate your help with this.

Thank you,  
Jason Johnson  
Lagniappe  
(251) 445-8336



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2/26/2019 11:28 AM  
05-CV-2019-900262.00  
CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
JODY L. WISE, CLERK

From: **Michael S. Gaull** <[MGaull@baldwincountyal.gov](mailto:MGaull@baldwincountyal.gov)>  
Date: Tue, Feb 5, 2019 at 2:34 PM  
Subject: RE: <EXTERNAL> Records Request  
To: Jason Johnson <[jason@lagniappemobile.com](mailto:jason@lagniappemobile.com)>

Jason,

Thank you for contacting the Baldwin County Sheriff's Office regarding your request for public records, however, our agency is unable to process your request at this time. Under the Code of Alabama, **Section 12-21-3.1**, law enforcement investigative files are not public records (see attached). In addition, if a court order is granted by a judge to released the information, please direct the order to the Baldwin County Major Crimes Unit, who is the investigating agency regarding this incident.

Respectfully submitted,  
Lt. Michael S. Gaull  
Baldwin County Sheriff's Office/Special Investigations Unit & Administrative Support.

## **2013 Code of Alabama**

### **Title 12 - COURTS.**

#### **Chapter 21 - EVIDENCE AND WITNESSES.**

##### **Section 12-21-3.1 - Subpoena of law enforcement officers and investigative reports; disposition of criminal matters.**

**Universal Citation:** [AL Code § 12-21-3.1 \(2013\)](#)

##### **Section 12-21-3.1**

##### **Subpoena of law enforcement officers and investigative reports; disposition of criminal matters.**

- (a) Neither law enforcement investigative reports nor the testimony of a law enforcement officer may be subject to a civil or administrative subpoena except as provided in subsection (c).
- (b) Law enforcement investigative reports and related investigative material are not public records. Law enforcement investigative reports, records, field notes, witness statements, and other investigative writings or recordings are privileged communications protected from disclosure.
- (c) Under no circumstance may a party to a civil or administrative proceeding discover material which is not authorized discoverable by a defendant in a criminal matter. Noncriminal parties may upon proper motion and order from a court of record: Secure photographs, documents and tangible evidence for examination and copying only by order of a court imposing such conditions and qualifications as may be necessary to protect a chain of custody of evidence; or protect the prosecutors', law enforcement officers', or investigators' work product; or to prevent the loss or destruction of documents, objects, or evidence. Such discovery order may be issued by a court of record upon proof by substantial evidence, that the moving party will suffer undue hardship and that the records, photographs or witnesses are unavailable from other reasonable sources.
- (d) Discovery orders prior to the disposition of the criminal matter under investigation are not favored and should be granted only upon showing that the party seeking discovery has substantial need of the materials and is unable, without undue hardship, to obtain the substantial equivalent by other means.

(e) Nothing in this section shall preclude the disclosure of investigative reports, including the testimony of law enforcement officers, to a state administrative agency authorized by law to investigate or conduct administrative contested case hearings in any matter related to the suspension, revocation, or restriction of a professional license or registration for the protection of the public health and safety.

(f) For purposes of this section, a criminal matter is disposed of in any of the following ways:

(1) When the prosecuting authority has presented the matter to a grand jury and a no bill or true bill has been returned.

(2) After a written statement by the chief law enforcement officer of the agency conducting the investigation that the matter under investigation is closed.

(3) When the entity or individual under investigation has been tried and final judgment entered.

*(Act 98-507, p. 1184, §§1, 2.)*